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[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

**DECISION**  
Case #: KIN - 173946

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on April 26, 2016, under Wis. Stat. § 48.57(3m)(f), and Wis. Admin. Code § DCF 58.08(2)(b), to review a decision by the Waupaca County Department of Social Services regarding Kinship Care, a hearing was held on May 24, 2016, by telephone.

The issue for determination is whether the Waupaca County Department of Health and Human Services (the agency) correctly denied the Petitioner's application for Kinship Care Benefits.

NOTE: The record was held open until May 31, 2016 to give the agency an opportunity to submit documentation in support of its claims. No documentation was received by the designated deadline.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

Respondent:

Department of Children and Families  
201 East Washington Avenue, Room G200  
Madison, WI 53703

By: [REDACTED], Corporation Counsel  
Waupaca County Department of Social Services  
811 Harding Street  
Waupaca, WI 54981-2087

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

### **FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Waupaca County.
2. On April 19, 2016, the agency sent the Petitioner a Kinship Care Denial of Payment and Appeal Rights, indicating that she was being denied benefits, because, “Your history and parenting ability include behavior or actions that are contrary to the health, safety or welfare of the child. [s. 58.10(2)[sic] (2a)] (Exhibit 1)
3. Also on April 19, 2016, the agency sent the Petitioner indicating that the agency had concerns because there was a substantiated find of sexual contact between siblings in 2006. (Exhibit 1)
4. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on April 26, 2016. (Exhibit 1)
5. Petitioner has court ordered placement of the children in question.

### **DISCUSSION**

The Kinship Care benefit is a public assistance payment of \$232 per month per child paid to a qualified relative who bears no legal responsibility to support the child. In Wisconsin, this benefit replaces the former Non-Legally Responsible Relative (NLRR) Aid to Families with Dependent Children (AFDC) payment. To be eligible for the payments, the relative must meet all of the conditions set forth in Wis. Stat. §§ 48.57(3m)(am)(1-5) or 48.57(3n)(am)(1-6). Subsection (3m) concerns Children in Need of Protection or Services (CHIPS) and subsection (3n) concerns guardianship cases.

The Department of Children and Families has also promulgated rules concerning the administration of the Kinship benefit in Wis. Admin. Code Chapter 58.

Neither party submitted a copy of Petitioner’s application for Kinship Care benefits. However, it appears undisputed that on an unspecified date, the Petitioner applied for benefits for her two grandchildren.

According to the Kinship Care Denial of Payment and Appeal Rights notice sent to the Petitioner, the benefits for her grandchildren were denied because the Petitioner did not meet approval criteria under Wis. Admin. Code §58.10(2)(a)2.,a.<sup>1</sup>, which states that in cases where, “the child is not placed by order of a court, the agency shall determine if the kinship living arrangement is in the best interests of the child...and the applicant’s or kinship care relatives’ parenting history and parenting ability do not include behaviors or actions that are contrary to the health, safety or welfare of the child.”

Specifically, the agency asserts that the Petitioner allowed one of her sons to sexually abuse her daughter in 2006, or otherwise failed to believe her daughter’s claims of abuse. Petitioner denies the allegation.

The record does not support the basis for the agency’s denial. First, the agency has provided no evidence to show the sexual abuse occurred. Second, even if the sexual abuse did occur, the agency has provided no evidence that the Petitioner allowed the abuse to occur or otherwise neglected the needs of the daughter. Third, there is some indication, via Petitioner’s testimony, that the circuit

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<sup>1</sup> It should be noted that the notice sent to the Petitioner printed the citation incorrectly, failing to distinguish the provision as one from the Administrative Code and by writing it as “ s.58.10(2(2))”.

court placed her grandchildren with her. As such, the circuit court has already made a determination that it is in the best interests of the children to reside with the Petitioner. Neither the agency, nor the Division of Hearings and Appeals has authority to set aside a determination of the circuit court.

I note that one statutory condition of receiving kinship benefits is that, “no adult resident, as defined in sub. (3p)(a), and no employee or prospective employee of the kinship care relative who would have regular contact with the child has any arrests or convictions that could adversely affect the child or the kinship care relative’s ability to care for the child.” Wis. Stat. §48.57(3m)(am)4m.; See also Wis. Stat. §48.57(3n)(am)4m.

The agency expressed concern that the son who they believe was the abuser, was or would be living in the home with the child. However, there is no documentation in the record showing that he was arrested for, or convicted of any crime that would adversely affect the children in question or that would affect the Petitioner’s ability to care for the children. Further, the Petitioner indicated that the son in question no longer resides with her.

In short, there is insufficient evidence to support the agency’s denial of Petitioner’s application for Kinship Care benefits.

The agency will have to continue processing the Petitioner’s application and it may not deny her application on the grounds adjudicated in this matter.

### **CONCLUSIONS OF LAW**

The agency incorrectly denied the Petitioner’s application for Kinship Care benefits.

**THEREFORE, it is** **ORDERED**

That within 10 days of this decision, the agency continue processing the Petitioner’s application for Kinship Care benefits. If she is eligible for those benefits, the agency shall backdate those benefits to the date of the application that is the subject of this appeal.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

## APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of  
Milwaukee, Wisconsin, this 8th day of  
August, 2016

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Mayumi M. Ishii  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on August 8, 2016.

Waupaca County Department of Social Services

DCF - Kinship Care

DCF - Kinship Care